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IN THE COURT OF APPEALS OF INDIANA

JUAN C. CHAMORRO,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 02A05-0708-CR-488
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Frances C. Gull, Judge
Cause No. 02D04-0702-FA-11

May 13, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Juan Chamorro was convicted after a jury trial of child molesting, a Class A felony,[1] and child molesting, a Class C felony.[2] Chamorro appeals the appropriateness of his sentence in light of his character and the nature of his offenses. We affirm.

FACTS AND PROCEDURAL HISTORY

From June 30 through July 4, 2005, Chamorro's five-year old daughter, T.C., stayed with him at his home. During this time, Chamorro molested T.C. multiple times. He touched her vagina with his fingers and inserted his penis into her vagina. T.C. began to bleed as a result of the molestation and on July 6, 2005, her mother observed irritation on T.C.'s vagina. T.C. told her mother what had happened and was taken to the hospital. She was examined but no injury related to an assault was found.

Chamorro was charged with two counts of child molesting, one a Class A felony based on sexual intercourse or deviate sexual conduct and the other a Class C felony based on fondling or touching. He was convicted after a jury trial and sentenced to the maximum fifty years for the Class A felony and eight years for the Class C felony. The sentences were to be served concurrently.

The trial court found as aggravating circumstances Chamorro's juvenile record, adult criminal history, and a history of failed efforts at rehabilitation. Chamorro had three adjudications of delinquency, including two juvenile adjudications for rape. His criminal history included three felony convictions of cocaine possession, one felony

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[1] Ind. Code § 35-42-4-3(a)(1).
[2] Ind. Code § 35-42-4-3(b).

conviction of resisting law enforcement and five misdemeanor convictions. His failed efforts at rehabilitation included time spent: 1) as a youth in juvenile intensive probation, home detention, the Ohio Department of Youth Services, and juvenile parole; and 2) as an adult in the Department of Correction, parole, suspended jail commitments, treatment at Brown & Associates, unsupervised probation, community service, adult probation, and the Whitley Superior Court Alcohol and Drug Program. The court found no mitigating circumstances.

DISCUSSION AND DECISION

Chamorro asserts the maximum sentence was inappropriate in light of his character and the nature of his offenses. He asks us to revise the sentence to a term not to exceed forty years.

Subject to our power to review and revise sentences under Indiana Appellate Rule 7(B),[3] sentencing decisions are reviewed only for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), *clarified on reh'g on other grounds*, 875 N.E.2d 218 (Ind. 2007). An abuse of discretion occurs if the decision is "clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom." *Id*. (quoting *K.S. v. State*, 849 N.E.2d 538, 544 (Ind. 2006)). We exercise deference to a trial court's sentencing decision "both because Rule 7(B) requires us to give 'due consideration' to that decision and because we

[3] Ind. Appellate Rule 7(B) provides: "The Court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender."

understand and recognize the unique perspective a trial court brings to its sentencing decisions." *Stewart v. State*, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007).

Our Supreme Court has explained our authority under App. R. 7(B):

> Although a trial court may have acted within its lawful discretion in determining a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of a sentence imposed by the trial court. This appellate authority is implemented through Appellate Rule 7(B), which provides that the Court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender. It is on this basis alone that a criminal defendant may now challenge his or her sentence where the trial court has entered a sentencing statement that includes a reasonably detailed recitation of its reasons for imposing a particular sentence that is supported by the record, and the reasons are not improper as a matter of law, but has imposed a sentence with which the defendant takes issue.

Anglemyer, 868 N.E.2d at 491 (citations omitted).

The trial court imposed the maximum sentence. Maximum sentences "should be reserved for the worst offenders and offenses." *Newsome v. State*, 797 N.E.2d 293 (Ind. Ct. App. 2003), *trans. denied*. "[W]e refer generally to the class of offenses and offenders that warrant the maximum punishment. But such class encompasses a considerable variety of offenses and offenders." *Buchanan v. State*, 767 N.E.2d 967, 973 (Ind. 2002).

Chamorro molested his five-year old daughter and "[c]rimes against children are contemptible." *Singer v. State*, 674 N.E.2d 11, 15 (Ind. Ct. App. 1996). Even so, sentences involving the sexual abuse of children have been revised on appellate review.

Chamorro relies on *Buchanan*, 767 N.E.2d 967, where the sentence was reduced from the maximum fifty years to forty years. This reliance is misplaced.

In *Buchanan*, the trial court imposed a maximum sentence for Class A felony child molesting. Buchanan, a fifty-eight year old man, took a five-year old girl he was babysitting to a private location, had her remove her clothes, molested her by licking her vagina, and then videotaped her while she was nude. *Id*. Buchanan's criminal history included three felony convictions and a misdemeanor conviction.

Buchanan is distinguishable. Buchanan was not related to his victim and he molested her by licking her vagina; Chamorro had sexual intercourse with his daughter. Buchanan's prior convictions were all at least twenty years old; Chamorro had more convictions than did Buchanan and all were within the last fifteen years. Buchanan's act was found to be a one-time occurrence; Chamorro molested his daughter multiple times over five days.

Chamorro also relies on *Walker v. State*, 747 N.E.2d 536 (Ind. 2001), where our Supreme Court ordered two consecutive forty-year sentences to be served concurrently, but did not revise the sentence otherwise. *Walker* is also distinguishable. Walker performed oral sex on a six-year old boy he was babysitting and to whom he was not related. He had no history of criminal behavior.

Chamorro asserts he did not cause the victim any physical harm, noting in *Buchanan* and *Walker* the lack of physical injury was a factor in reducing the original sentence. However, "the absence of a physical injury does not bar an enhanced sentence," *Walker*, 747 N.E.2d at 538, and the record reflects Chamorro's daughter might

have suffered physical harm. She testified she began to bleed when Chamorro molested her and her mother observed irritation on the daughter's vagina. The daughter exhibited no signs of physical abuse when examined at the hospital, but the attending nurse testified most molestation victims do not exhibit signs of physical abuse.

Chamorro has an extensive criminal record including four felony convictions and five misdemeanor convictions. He has three adjudications of delinquency, including two juvenile adjudications for rape. "The significance of a criminal history in assessing a defendant's character and an appropriate sentence varies based on the gravity, nature, and number of prior offenses in relation to the current offense." *Stewart*, 866 N.E.2d at 866. The multiple convictions and adjudications, coupled with the fact that two of the adjudications are for rape, reflect poorly on Chamorro's character.

Chamorro also has a history of failed rehabilitation efforts. Those include time spent: 1) as a youth in juvenile intensive probation, home detention, the Ohio Department of Youth Services, and juvenile parole; and 2) as an adult in the Department of Correction, parole, suspended jail commitments, treatment at Brown & Associates, unsupervised probation, community service, adult probation, and the Whitley Superior Court Alcohol and Drug Program. Chamorro has continued to commit offenses and those offenses have escalated in gravity to the Class A felony in this case. This also reflects poorly on Chamorro's character.

The sentencing court found no mitigating factors. Chamorro's counsel stated, "I can't articulate any mitigators with all due respect to my client." (Sentencing Tr. at 5.)

In *Buchanan*, by contrast, the sentencing court found a number of mitigating factors. *Buchanan*, 767 N.E.2d at 973.

The nature of Chamorro's offense permits the maximum sentence, and Chamorro's character does not warrant a lesser sentence. We accordingly affirm.

Affirmed.

KIRSCH, J., and RILEY, J., concur.